STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID JAMES WASHINGTON,

Defendant-Appellant.

UNPUBLISHED
February 23, 1999

No. 201244
Kent Circuit Court
LC No. 96-007595 FH

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of malicious destruction of police property, MCL 750.377b; MSA 28.609(2), and was sentenced to serve 120 hours of community service in lieu of 90 days in jail. He appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The malicious destruction charge in this case is based upon damage to the back door of a police patrol car that was allegedly caused by defendant while protesting his arrest on a bench warrant for an unpaid traffic ticket. On appeal, defendant argues that the bench warrant was improperly issued, and that his conviction should be set aside for lack of evidence of a valid arrest warrant. We disagree.

Defendant's challenge to his conviction based upon the validity of the traffic ticket bench warrant argument is unavailing for a number of reasons. First of all, the issue is unpreserved. Although defendant claimed at trial that there should not have been a warrant for his arrest, and he offered a "civil infraction notice" letter he had received as support for that claim, defendant never moved for dismissal on this basis or ever otherwise sought a ruling by the trial court on the legality of the warrant. Nor did defendant raise the issue in his motion for new trial or any other postconviction motion. Accordingly, there is no ruling on this issue by the lower court for this Court to review.

Moreover, the record presented to this Court is insufficient to determine the legality of the bench warrant. Defendant's reliance upon his "civil infraction notice" letter is misplaced, since he admitted at trial that the bench warrant was for an offense other than the two offenses which were the subject of that letter. Furthermore, even if defendant's misplaced reliance upon the letter could possibly provide a

"good faith" defense in a civil contempt proceeding under MCL 257.908; MSA 9.2608, that possibility would not preclude the issuance of a bench warrant to secure defendant's appearance, either with or without the issuance of a "show cause" order. See MCL 257.908(1); MSA 9.2608(1) ("court may enter summons or order show to cause *or* bench warrant of arrest for the defendant's appearance.") Additionally, even without any civil contempt proceedings on defendant's failure to pay the ticket, defendant's failure to appear also provides a basis for a bench warrant, pursuant to MCL 257.744; MSA 9.2444.

Even assuming, for the sake of argument, that the warrant was invalid, it does not necessarily follow that defendant's arrest was illegal. So long as the warrant was not defective on its face and the police had no reason to know that the warrant was improperly issued, the police officers were entitled to rely on the warrant listed in the LEIN check. See *Drennan v People*, 10 Mich 169, 182 (1862); *People v Bell*, 74 Mich App 270; 253 NW2d 726 (1977). Moreover, even if defendant's arrest was illegal, this would not necessarily preclude a conviction, unless the legality of defendant's arrest is an element of the offense or an illegal arrest is a defense to the charge. Cf. *People v Landrie*, 124 Mich App 480, 482; 335 NW2d 11 (1983) (illegal arrest is a complete defense to charge of resisting an officer making an arrest). As plaintiff notes, defendant has failed to offer any authority or argument to show that the legality of his arrest was an element to be established by the prosecution or a possible defense to a malicious destruction charge. At most, an illegal arrest only provides a possible basis for suppression of evidence obtained as a result of the arrest, *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974); *People v Dalton*, 155 Mich App 591, 597; 400 NW2d 689 (1986), provided that the arrest is constitutionally invalid – not merely statutorily illegal, *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). Here, defendant never moved to suppress, and as already noted, an invalidity not appearing on the face warrant would not necessarily establish that defendant's arrest was unconstitutional.

Defendant also argues that the trial court erred during the jury voir dire by granting the prosecution's request to exercise all of its peremptory challenges at one time, instead of requiring peremptory challenges to be exercised one at a time, alternating between the prosecution and the defense. Defendant cites *People v Thomas*, 25 Mich App 213; 181 NW2d 328 (1970) and *People v Parham*, 28 Mich App 267; 184 NW2d 273 (1970), lv den 384 Mich 803 (1971) for the proposition that an alternating exercise of peremptory challenges is required. We find *Thomas* and *Parham* are distinguishable here because the defendants in those cases were *required* to exercise and exhaust or waive all of their peremptory challenges before the prosecution was required to exercise any of its peremptory challenges. The cases say nothing about how many peremptory challenges a party may be *allowed* to exercise at one time.

Moreover, defendant has also failed to preserve this issue for review. Where a party fails to object to the method of jury selection at trial, he has waived the issue on appeal. See *People v Lawless*, 136 Mich App 628, 636; 357 NW2d 724 (1984); *People v Goode*, 78 Mich App 781, 789; 261 NW2d 47 (1977). Moreover, a party's claim that the jury selection process was defective generally is not preserved if the party fails to use all available peremptory challenges. *People v Taylor*, 195 Mich App 57, 6; 489 NW2d 99 (1992). A party may also waive a challenge to the jury selection

process by expressing satisfaction with the jury at the close of voir dire. See cases cited in *People v Hubbard (After Remand)*, 217 Mich App 459, 466; 552 NW2d 493 (1996), lv den 454 Mich 888 (1997). See also *People v Russell*, 182 Mich App 314, 322 n 1; 451 NW2d 625 (1990) (Sawyer, J., dissenting), rev'd 434 Mich 922, 456 NW2d 83 (1990).

Here, defendant never objected to the trial court allowing the prosecution to exercise all of its peremptory challenges at one time. Furthermore, defendant's counsel only exercised one of defendant's available peremptory challenges, and expressed satisfaction with the jury at the close of voir dire. Accordingly, defendant has waived any error in the procedure for exercising peremptory challenges during jury selection.

Affirmed.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Martin M. Doctoroff